Supreme Court, U. S.
FILED
JAN 6 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-867

THE OKLAHOMA PUBLISHING COMPANY, a corporation,
Petitioner,

v.

THE DISTRICT COURT OF OKLAHOMA COUNTY, and THE HONORABLE CHARLES E. HALLEY, Acting Associate District Judge thereof,
Respondents.

BRIEF OF AMICUS CURIAE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION

ARTHUR B. HANSON
MITCHELL W. DALE
HANSON, O'BRIEN, BIRNEY & BUTLER
888 Seventeenth Street, N.W.
Washington, D.C. 20006
202/298-6161

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

15385-1-77

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PRELIMINARY STATEMENT

The American Newspaper Publishers Association (hereinafter "ANPA") submit this brief amicus curiae in support of Petitioner, the Oklahoma Publishing Company. All parties to this suit have given their written consent to the filing of this brief. Copies of such consents have been filed with the Clerk of this Court.

INTEREST OF THE AMICUS CURIAE

The American Newspaper Publishers Association is a non-profit membership corporation organized and existing under the laws of the Commonwealth of Virginia. Its membership consists of more than 1,200 newspapers representing over ninety-percent of the total daily and Sunday newspaper circulation and a portion of the weekly newspaper circulation in the United States. *The Daily Oklahoman, The Oklahoma City Times, The Sunday Oklahoman,* and fourteen other newspapers published throughout the State of Oklahoma, hold membership in ANPA.

Concerned with issues of general significance to the profession of journalism and the newspaper publishing business, ANPA seeks to keep its members abreast of matters touching on these concerns. In that regard, the Association's member newspapers, individually and through the ANPA, are ever vigilant to protect the public's right under the First Amendment to information concerning the activities of government and matters of public interest. ANPA and its members are vitally interested in protecting and maintaining the primary function of newspapers: the gathering of information for dissemination to the public. To insure the free and uncensored flow of information to the public, newspapers and their employees must be free to report happenings in their communities, particularly events taking place in the open courtroom, without censorship and "gag" orders.

It is most respectfully recalled to this Court's attention that the command of the First Amendment—that "Congress shall make no law . . . abridging the freedom of speech or of the press . . ."—has been both applied through the Fourteenth Amendment to invalidate re-

straints of freedom of the press imposed by the States, *see, e.g., Miami Herald Pub. Co.* v. *Tornillo,* 418 U.S. 241 (1974); *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964); and interpreted to prohibit such restraints when imposed by the courts, *see, e.g., Nebraska Press Ass'n* v. *Stuart,* 96 S.Ct. 2791 (1976); *New York Times Co.* v. *United States,* 403 U.S. 713 (1971); *Craig* v. *Harney,* 331 U.S. 367 (1947); *Bridges* v. *California,* 314 U.S. 252 (1941).

Moreover, the protections afforded by the First Amendment are most vigorously applied to prevent previous restraints upon publication. This Court has noted: "[T]he main purpose of such constitutional provisions is to prevent all such previous restraints upon publications as had been practiced by other governments. . . ." *Patterson* v. *Colorado,* 205 U.S. 454, 462 (1907); *see also, Near* v. *Minnesota,* 283 U.S. 697, 710-717 (1931); *Grosjean* v. *American Press Co.,* 297 U.S. 233, 249 (1936). Accordingly, this Court has accorded greater protection against prior restraints upon speech than against subsequent punishment for illegitimate speech. *See, e.g., Southeastern Promotions Ltd.* v. *Conrad,* 420 U.S. 546 (1975); *Carroll* v. *Princess Anne,* 393 U.S. 175, 180-181 (1968). Only narrow exceptions to the rule against prior restraints have been approved by this Court. *See, e g., Miller* v. *California,* 413 U.S. 15 (1973); *Roth* v. *United States,* 354 U.S. 476, 481 (1957) (obscene publications); and *Near* v. *Minnesota, supra,* at 716; *Chaplinsky* v. *New Hampshire,* 315 U.S. 568 (1942) ("fighting words").

A third category of expression—the publication of information relating to matters of military security—has been adverted to *in dictum* as speech which, although otherwise constitutionally protected, might be

suppressed before publication upon proof that disclosure would "surely result in direct, immediate and irreparable damage to our Nation or its people." *New York Times Co.* v. *United States, supra,* at 730 (Stewart, J., concurring opinion). *See also, Near* v. *Minnesota,* supra, at 716. Nevertheless, "[e]ven this third category . . . has never served as the basis for actually upholding a prior restraint against the publication of constitutionally protected materials." *Nebraska Press Ass'n* v. *Stuart, supra,* at 2818 (Brennan, J., concurring opinion).

The order barring Petitioner from republishing information lawfully obtained and already broadly disseminated to the public comes before this Court as a prior restraint, and therefore "with a heavy presumption of invalidity." *Bantam Books, Inc.* v. *Sullivan,* 372 U.S. 58, 70 (1962). The information sought to be published herein was openly obtained by Petitioner in publicly held judicial proceedings. There is no indication that the enjoined publication would irreparably injure the juvenile's legal rights or his asserted right to anonymity and rehabilitation. Therefore this "presumption of invalidity," your *amicus* respectfully submits, cannot be overcome. No authority exists for the contention of the Oklahoma Supreme Court that "the interest of the possible rehabilitation of the youthful offender and his subsequent integration into society" overrides the right of the press to publish freely information lawfully obtained in open court. In fact, Respondent's contention has been expressly foreclosed by the prior decisions of this Court. *See Nebraska Press Ass'n* v. *Stuart, supra; Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469 (1974); *Craig* v. *Harney,* 331 U.S. 367, 374 (1974).

Because it is essential to our democratic system of government that the press be unfettered in its right to report on events that transpire in open court, *see, e.g., Sheppard* v. *Maxwell,* 384 U.S. 333, 350 (1966); *Cox Broadcasting Corp.* v. *Cohn, supra,* at 491-496; *Stroble* v. *California,* 343 U.S. 181 (1952); *In re Oliver,* 333 U.S. 257, 270-271 (1948); *Grosjean* v. *American Press Co.,* 297 U.S. 233, 250 (1936); and because the order and holding of the lower court herein, if allowed to stand, would directly and adversely impact upon the membership of ANPA in the performance of their duty to insure the free and uncensored flow of information to the public, ANPA desires to briefly present to the Court, for its assistance, its views on the important issues raised in Petitioner's application before this Court.

QUESTIONS PRESENTED, CONSTITUTIONAL PROVISIONS INVOLVED AND STATEMENT OF THE CASE

We adopt the questions presented, constitutional provisions involved, and statement of the case, all as set forth in Petitioner's brief.

ARGUMENT

1. Respondents' Order Constitutes an Invalid Prior Restraint Upon Freedom of the Press

This Court on various occasions has noted that the primary function of the First Amendment is to prevent prior restraints upon speech and publication. *See, e.g., Patterson* v. *Colorado,* 205 U.S. 454, 462 (1907); *Grosjean* v. *American Press Co.,* 297 U.S. 233, 249 (1936); *Near* v. *Minnesota,* 283 U.S. 697, 716-717 (1931). Accordingly, any prior restraint of the press

"comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc.* v. *Sullivan,* 372 U.S. 58, 70 (1963); *Organization for a Better Austin* v. *Keefe,* 402 U.S. 415, 419 (1971).

This general prohibition upon prior restraints, however, admits of a few narrow exceptions. It has been held that obscenity is not constitutionally-protected speech. *See, e.g., Roth* v. *United States,* 354 U.S. 476 (1957). It has been similarly suggested that "[t]he . . . community may be protected against incitements to acts of violence and the overthrow by force of orderly government [for] [t]he constitutional guaranty of free speech does not 'protect a man from an injunction against uttering words that have all the effect of force . . .'" *Near* v. *Minnesota, supra,* at 716. *See also, Chaplinsky* v. *New Hampshire,* 315 U.S. 568 (1942). Finally, it has been suggested in *dictum* that there may exist a limited "military security" exception to the rule against prior restraints. *See Near* v. *Minnesota, supra,* at 716; *Schenck* v. *United States,* 249 U.S. 47 (1919). Yet in *New York Times Co.* v. *United States,* 403 U.S. 713 (1971), wherein this Court specifically addressed the validity of a prior restraint sought to be imposed for purposes of military security, the Court refused in a brief *per curiam* opinion to uphold the prior restraint. Justice White, joined by Justice Stewart, noted in his concurring opinion that even a showing that "revelation of these documents will do substantial damage to public interests" is insufficient to satisfy "the very heavy burden that [the government] must meet to warrant an injunction against publication." *Id.* at 731. In addition, Justice Douglas and Justice Black denied that even a limited "military security" exception can be found under the First Amendment. *Id.* at 714

(Black, J., concurring); *id.* at 720 (Douglas, J., concurring).

Thus, if it may be assumed that obscenity and "fighting words" do not constitute "speech" in terms of First Amendment protections, it is arguable whether there remains a single narrow exception to the accepted rule against previous restraints upon publication. In the instant case, the Oklahoma Supreme Court, having expressly determined that the existing "barriers against the use of prior restraint . . . were not overcome" by Respondents herein, would therefore have this Court acquiesce in the creation of a new exception to the ban on prior restraints—*i.e.,* where a prior restraint is necessary to preserve the anonymity of a youth, who is the subject of a juvenile proceeding, so as not to impair "the possible rehabilitation of the youthful offender and his subsequent integration into society."

Your *amicus,* like the Oklahoma Supreme Court, is unable to find an instance where this alleged "direct confrontation" between the First Amendment rights of the press and the asserted rights of a juvenile to anonymity has been addressed by this Court. Nevertheless, this Court is not without guidance as to the right of the press to freely report on judicial proceedings held in public. The major cases upholding this principle were noted by Justice Brennan, with whom Justice Marshall and Justice Stewart concurred, in *Nebraska Press Association* v. *Stuart,* 97 S.Ct. 2791 (1976) (concurring opinion):

> "Much of the information that the . . . courts enjoined petitioners from publishing *was already in the public domain, having been revealed in open court proceedings or through public documents. Our prior cases have foreclosed any serious con-*

tention that further disclosure of such information can be suppressed before publication or even punished after publication. 'A trial is a public event. What transpires in the court room is public property. . . . Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.' *Craig* v. *Harney,* 331 U.S. 367, 374 (1947). Similarly, *Estes* v. *Texas,* 381 U.S. 532, 541-542 (1965), a case involving the Sixth Amendment right to a fair trial, observed that 'reporters of all media are plainly free to report whatever occurs in open court through their respective media. This was settled in *Bridges* v. *California,* 314 U.S. 252 (1941), and *Pennekamp* v. *Florida,* 328 U.S. 331 (1946), which we reaffirm.' *See also* 381 U.S., at 583-585 (Warren, C.J., concurring). And *Sheppard* v. *Maxwell,* 384 U.S. 333, 384-385 (1966), a case that detailed numerous devices that could be employed for ensuring fair trials, explicitly reiterated that '[o]f course, there is nothing that proscribes the press from reporting events that transpire in the courtroom.'" *Id.* at 2820. (emphasis added).

In specific reference to the special exigencies which might justify subsequent punishment for press comment which may interfere with the fair administration of justice, this Court has held that "the substantative evil must be extremely serious and the degree of imminence extremely high," *Bridges, supra,* at 263, and that "the fires which [the expression] kindles must constitute an immediate, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil." *Craig, supra,* at 376.

In *Cox Broadcasting Corp.* v. *Cohn, supra,* a case involving a suit against a publisher for damages under a State law specifically recognizing the rights of its citizenry to anonymity and privacy, in instances where a member of one's family has been raped, this Court held that a "state may [not] impose sanctions on the accurate publication of the name of a rape victim obtained from public records." *Id.* at 491.

In *Nebraska Press Ass'n* v. *Stuart, supra,* wherein the Supreme Court considered the constitutionality of a judicial order that had been issued to previously restrain a publication which would "tend to prevent a fair trial," Justice Brennan based his concurring opinion in part on the above case law with respect to punishment for speech *after publication:*

> "Prior restraints are particularly anathema to the First Amendment, and any immunity from punishment subsequent to publication of given material applies *a fortiori* to immunity from suppression of that material before publication. Thus, in light of *Craig,* which involved a contempt citation for a threat to the administration of justice, and *Cox,* which similarly involved an attempt to establish civil liability after publication, it should be clear that no injunction against the reporting of such information can be permissible." *Id.* at 2821.

We respectfully submit that the fact that the information sought to be suppressed by the order herein was obtained at a public judicial proceeding makes any effort to enjoin its publication through a "gag order" patently unconstitutional under *Cox* and *Nebraska Press Ass'n.* The Oklahoma Supreme Court has attempted to distinguish *Cox,* and its focus upon the fact that the published information was gleaned from *public* records, on the grounds that

the Oklahoma statute involved in the instant case "provides juvenile proceedings shall be held in private unless *specifically* ordered to be held in public" and that there is "no indication that the Judge distinctly and expressly ordered the hearing to be public." Nevertheless, the fact remains that a detention hearing was held publicly. Newsmen, at said hearing, were able to both obtain the name of the juvenile and to take photographs of him, and once the juvenile's identity is divulged at a public hearing, *Cox* clearly establishes the right to publish that information. Following this hearing—both prior and subsequent to the entry of Respondents' Pretrial Order—news stories have been published identifying the juvenile by name.

Undoubtedly, the trial court, upon hindsight, might wish that the juvenile's hearing had been held *in camera*. Moreover, it is probably erroneous to suppose that, in conducting the detention hearing in public, "the State . . . must have concluded that the public interest is thereby being served." *Cox*, *supra*, at 495. Nevertheless, this Court in *Cox* has made it clear, by analogy, that whatever means exist for protecting the state's interest in private judicial proceedings must be enforced *by the State*, and not by the press:

> "If there are privacy interests to be protected in judicial proceedings, the states must respond by means which avoid public documentation or other exposure of private information." *Id.* at 496.

Faced with similar circumstances in *Nebraska Press Ass'n* v. *Stuart, supra*, this Court held:

> "To the extent that this Order prohibited the reporting of evidence adduced at the open preliminary hearing, it plainly violated settled principles: 'there is nothing that proscribes the press from reporting events that transpire in the courtroom.' *Sheppard* v. *Maxwell, supra*, at 362-363. *See also, Cox Broadcasting Corp.* v. *Cohn, supra; Craig* v. *Harney, supra. The County Court could not know that closure of the preliminary hearing was an alternative open to it until the Nebraska Supreme Court so construed state law; but once a public hearing had been held, what transpired there could not be subject to prior restraint."* *Id.* at 2807, (emphasis added).

That it is incumbent upon *judges,* and not the press, to insure the right to a fair trial (and, by implication, a juvenile's "right to rehabilitation") is preserved without resorting to prior restraint of the press, was also adverted to by Justice Brennan:

> "[A]lthough there may in some instances be tension between uninhibited and robust reporting by the press and fair trials for criminal defendants, *judges possess adequate tools short of injunctions against reporting for relieving that tension. To be sure, these alternatives may require greater sensitivity and effort on the part of judges conducting criminal trials than would the stifling of publicity through the simple expedient of issuing a restrictive order on the press; but that sensitivity and effort is required in order to ensure the full enjoyment and proper accommodation of both First and Sixth Amendment rights." Nebraska Press Ass'n* v. *Stuart, supra*, at 2828 (Brennan, J., concurring opinion) (emphasis added).

The fact that publication of the juvenile's name and of other "facts which might lead to the identity of the juvenile" has occurred, both prior and subsequent to the issuance of the Pretrial Order, is fatal to the required finding that the Pretrial Order, bearing, as it does, such a heavy presumption of constitutional in-

validity, actually serves its intended and beneficent purposes. In addressing the showing required to justify the imposition of a prior restraint upon publication which might subvert a criminal defendant's Sixth Amendment rights to a fair trial, Justice Powell has noted:

> "In my judgment a prior restraint properly may issue only when it is shown to be necessary to prevent the dissemination of prejudicial publicity that otherwise poses a high likelihood of preventing, directly and irreparably, the impaneling of a jury meeting the Sixth Amendment requirement of impartiality. This requires a showing that (i) there is clear threat to the fairness of trial, (ii) such a treat is posed by the actual publicity to be restrained and (iii) no less restrictive alternatives are available. *Notwithstanding such a showing, a restraint may not issue unless it also is shown that previous publicity or publicity from unrestrained sources will not render the restraint inefficacious.*" *Nebraska Press Ass'n* v. *Stuart, supra,* (Powell, J., concurring opinion, reported at 49 L.Ed.2d 704-705) (emphasis added).

Thus, the Order entered below not only offends the prohibitions on prior restraints set forth in the First Amendment and *Near* v. *Minnesota, supra,* it also disregards the clear command of *Cox, supra,* that once information arising from a judicial proceeding legally becomes part of the "public record", the judiciary enjoys no special perquisite which enables it to proscribe the publication of said information. In addition, this Court's decision in *Nebraska Press Ass'n, supra,* places upon judges, not the press, the responsibility for relieving any tension which may exist between robust reporting by the press and the procedural

and substantive rights of parties to judicial proceedings.

In sum, as noted by Justice White's concurring opinion in *Miami Herald Pub. Co.* v. *Tornillo,* 418 U.S. 241 (1974):

> "According to our accepted jurisprudence, the *First Amendment erects a virtually insurmountable barrier between government and the print media so far as government tampering, in advance of publication, with news and editorial content is concerned. New York Times Co.* v. *United States,* 403 U.S. 713 (1971). * * * Regardless of how beneficient-sounding the purposes of controlling the press might be, we prefer 'the power of reason as applied through public discussion' and remain intensely skeptical about those measures that would allow government to insinuate itself into the editorial rooms of this Nation's press." *Id.* at 259; (footnote deleted) (emphasis added).

2. Respondents' Pretrial Order Is Constitutionally Invalid Because the Procedures Employed in Its Issuance, and Its Overbroad Scope, Result in the Patent Violation of Petitioner's Fourteenth Amendment Right of Due Process

This Court's opinion, in the only other case it has considered involving the imposition by a trial court of a gag order on the press, clearly confirms, assuming *arguendo* such an order is substantively valid, the further necessity for procedural due process in its imposition. *Nebraska Press Ass'n* v. *Stuart, supra,* at 2826 (Brennan, J., concurring opinion). Yet the Supreme Court of Oklahoma has ruled that Petitioner waived its right to procedural due process by deeming Petitioner's "voluntary appearance," for purposes of challenging the merits of the Order, to be a general appearance under state law. Your *amicus* respect-

fully submits that the Petitioner, having decided, in accordance with its perception of the holding in *U. S.* v. *Dickinson,* 465 F.2d 496, *aff'd after remand,* 476 F.2d 373, *cert. denied,* 414 U.S. 979 (1973), to seek redress for a substantive violation of its First Amendment rights, may not justifiably be held to have voluntarily waived its concomitant right to procedural due process. After application to the Supreme Court of the State of Oklahoma for a Writ of Prohibition barring Respondents from attempting to exercise jurisdiction over Petitioner in this matter and for vacation of the Pretrial Order, the Oklahoma Supreme Court took no action for two months while Petitioner, unlike other media on whom the Pretrial Order was "served", voluntarily complied with the terms of the Pretrial Order. Evidently, Petitioner might have chosen to ignore the restraining order and to frustrate the will of the Court, in view of Respondents' lack of jurisdiction over Petitioner. *See, Nebraska Press Ass'n* v. *Stuart, supra,* at 2806, n. 9. Rather, Petitioner submitted to the jurisdiction of the Court—in either conscientious or inadvertent disregard of the strategic means available to it for avoiding compliance—in order that Respondents' order might be fully reviewed in light of both the procedural and substantive dictates of the Constitution. The result, as feared by Justice Brennan, *Nebraska Press Ass'n, supra* at 2826 (concurring opinion), is the unequal treatment of different organs of the press media.

Moreover, questions of *in personam* jurisdiction aside, it is respectfully submitted that the procedures employed by Respondents in the imposition of this order "cannot withstand the mildest breeze emanating from the Constitution." *Southeastern Promotions,*

Ltd. v. *City of West Palm Beach,* 457 F.2d 1016, 1017 (1972). This Court, in various of its decisions, has formulated procedures which must be followed before material potentially protected by the First Amendment may be suppressed. The speech involved herein, unlike obscenity, is clearly within the protection of the First Amendment. The procedural requirements governing suppression of obscene material is therefore relevant, for "if the Constitution requires elaborate procedural safeguards in the obscenity area, *a fortiori* it should require equivalent procedural protection when the speech involved . . . implicates more central First Amendment concerns." Monaghan, *First Amendment "Due Process",* 83 Harv. L. Rev. 518, 519 (1970).

Your *amicus* will not burden this Court with a recitation of the unusual procedures employed by Respondents in the issuance and service of the Pretrial Order. Rather, we with to recall to the Court's attention the vital necessity that certain procedures, designed to assure that the imposition of a prior restraint upon First Amendment freedoms is not unfounded or excessive, be diligently observed.

In *Freedman* v. *Maryland,* 380 U.S. 51 (1965), the Supreme Court held that before an allegedly obscene motion picture may be suppressed, "a judicial determination in an adversary proceeding" is necessary. *Id.* at 58; *see also, Kingsley Books, Inc.* v. *Brown,* 354 U.S. 436 (1957).

In *Carroll* v. *President and Commissioners of Princess Anne,* 393 U.S. 175 (1968), a case not involving obscene material, this Court invalidated an injunction against the staging of a political rally because it was

issued *ex parte* and no meaningful effort had been made prior to the issuance of the order to inform, or to invite the participation of, those enjoined by its terms. Justice Brennan, discussing in *Nebraska Press Ass'n* the procedures which would be required to be followed in the issuance of an otherwise valid gag order, stated:

> "[T]o bind the media, they would have to be notified and accorded an opportunity to be heard. *See, e.g., Carroll* v. *Princess Anne,* 393 U.S. 175 (1968); *McKinney* v. *Alabama,* — U.S. — (1976)." *Nebraska Press Ass'n, supra,* at 2826.

Further, we respectfully submit that any decision to restrain the press must be consistent with the record as developed at the hearing, *see Tinker* v. *Des Moines School Dist.,* 393 U.S. 503, 509 (1969), and based on particularized findings. *Id.; cf. Nebraska Press Ass'n* v. *Stuart, supra,* at 2804-2805; *United States* v. *Schiavo,* 504 F.2d 1, 13-15 (concurring opinion), *cert. denied,* 95 S.Ct. 690 (1974).

Finally, to the extent that Respondent Halley has construed the Pretrial Order to impliedly incorporate into the terms of its prohibition any other "facts which might lead to the identity of the juvenile," said Order is patently overbroad and unconstitutionaly vague. *See, e.g., Hynes* v. *Mayor and Council of the Borough of Oradell,* 48 L.Ed.2d 243 (1976); *Smith* v. *Goguen,* 415 U.S. 566 (1974); *Shelton* v. *Tucker,* 364 U.S. 479 (1960). For "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP* v. *Button,* 371 U.S. 415, 438 (1963). The validity of a prohibition upon the publication of unspecified "implicative information"

has been addressed specifically by this Court in *Nebraska Press Association* v. *Stuart, supra:*

> "As part of the final order, entered after plenary review, this prohibition regarding 'implicative' information is too vague and too broad to survive the scrutiny we have given to restraints on First Amendment rights." *Id.* at 2807.

Thus, the Pretrial Order issued below not only offends the substantive command of the First Amendment, but has been upheld despite its issuance without due regard for the substantive and procedural due process rights of Petitioner. As a result, the restraint was issued without participation or comment by Petitioner and is invalidly "predicated [merely] upon surmise or conjecture that untoward consequences may result." *New York Times* v. *U.S., supra,* at 725-26 (Brennan, J., concurring opinion).

CONCLUSION

In light of the foregoing, and in support of the arguments advanced by the petitioner in its brief in chief, your *amicus* respectfully urges that this Court vacate the order below. In so doing, we urge that this case presents to the Court an opportunity to lay this problem to rest for the foreseeable future by issuing an opinion which will establish once and for all, absent Constitutional change, the perimeters within which Courts may issue prior restraints upon the press, if there be any such.

It seems to your *amicus* that the time has come when fencing between the courts and the press should be laid to rest so that more productive ends can be served. The flow of litigation in this area over the past ten years indicates a need for a general rule as Justice

White contemplated in his concurring opinion in *Nebraska Press Ass'n* v. *Stuart, supra,* at 2808.

> "Technically there is no need to go farther than the Court does to dispose of this case, and I join the Court's opinion. I should add, however, that for the reasons which the Court itself canvasses there is grave doubt in my mind whether orders with respect to the press such as were entered in this case would ever be justifiable. It may be the better part of discretion, however, not to announce such a rule in the first case in which the issue has been squarely presented here. Perhaps we should go no farther than absolutely necessary until the federal courts, and ourselves, have been exposed to a broader spectrum of cases presenting similar issues. If the recurring result, however, in case after case is to be similar to our judgment today, we should at some point announce a more general rule and avoid the interminable litigation that our failure to do so would necessarily entail."

Absent such a general rule, we shall have a constant stream of minor fact variations which will needlessly take up the time of this Court and of the press in preventing encroachments upon the First and Fourteenth Amendments by trial judges who do not yet believe or perhaps understand the teachings of this Court in the cases cited by your petitioner and your *amicus* herein.

We urge and plead that consideration be given to this approach.

Respectfully submitted,

ARTHUR B. HANSON
MITCHELL W. DALE
HANSON, O'BRIEN, BIRNEY & BUTLER
888 Seventeenth Street, N.W.
Washington, D.C. 20006
202/298-6161